(82)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No. 85 of 2002

APPELLANT : Narendra Lodhi

Versus

RESPONDENT : State of C.G.

J U D G M E N T

POST ON 11th SEPTEMBER 2007

Sd/-
DHIRENDRA MISHRA
Judge

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No. 85 of 2002

APPELLANT : Narendra Lodhi,S/o Siyaram, aged about 18 years, R/o Ramnagar, P.S. Supela, Distt. Durg (CG)

Versus

RESPONDENT : State of C.G. through P.S. Supela, Distt. Durg.

Present:

Shri Janak Ram Verma, counsel for the appellant.

Shri G.K. Beriwal, Addl. Public Prosecutor for the State/respondent.

JUDGMENT

(Delivered on 11 /09/2007)

Dhirendra Mishra, J

The appellant has preferred this appeal against the judgment of conviction and order of sentence dated 14.12.2001 passed in S.T.No. 13/01 whereby the learned Sessions Judge, Durg has convicted the appellant under Section 342, 376(2)(f) and 376 read with Section 511 of the IPC and sentenced him to undergo R.I. for six months, R.I. for ten years and pay a fine of Rs.1,000/-, in default of payment of fine to further undergo R.I. for six months. However, the trial Court has not sentenced the appellant under Section 376/511 of the IPC.

2. Case of the prosecution in brief is that on 6.8.2000 complainant Premkunwar and her husband Toran were present in their house, their daughter, aged about 7 ½ years, had gone to the house of neighbour Narendra Lodhi, the accused, for watching T.V. From there she retuned weeping and informed that the appellant after laying her on the ground has committed rape on her. The complainant saw her private parts and noticed that there was some reddishness like blood. She also observed spots of sperm on front and rear of the prosecutrix. She along with her husband went to the house of accused Narendra and asked him about the incident, however, the accused did not give any reply.

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Thereafter, the complainant and her husband along with their daughter went to lodge the report at Police Station Supela where report of Ex.P/2 was registered. The prosecutrix was sent for medical examination to Govt. Hospital, Durg and her medical report is Ex.P/12. The underwear of the accused and vaginal slides & frock of the prosecutrix were taken into possession under Ex.P/5 & P/6 respectively and the same were sent for chemical analysis to Forensic Science Laboratory, Raipur from where report Ex.P/CD-1 was received. The accused was also sent for medical examination and his medical report is Ex.P/11. After completing investigation charge sheet was filed against the accused/appellant.

3. During trial the prosecution examined 10 witnesses. Thereafter, statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case and pleaded innocence and false implication on the ground of previous quarrel. However, learned trial Court after hearing counsel for the respective parties, convicted and sentenced the accused/appellant as mentioned above.

4. Learned counsel for the appellant argued that testimony of the prosecutrix is not corroborated by the medical evidence. There is no evidence of penetration as hymen of the prosecutrix was intact according to medical report of Ex.P/12 and statement of Dr. (Smt.) P. Dani (P-10) who has examined the prosecutrix.

5. Reliance is placed on the judgment of Hon'ble Supreme Court in the matter of **Aman Kumar and another Vs. State of Haryana** reported in **(2004) 4 SCC 379.**

6. On the other hand, learned counsel for the State/respondent supported impugned judgment of the trial Court.

7. I have heard learned counsel for both the parties and perused the material available on record including the impugned judgment of trial Court.

8. The trial Court has assessed aged of the prosecutrix as 6-7 years. She has been examined as prosecution witness No. 1 without administering oath. She has stated that the accused took her to his Mami's house, his younger brother was watching picture in his house. Narendra took out his penis and inserted in her vagina, it was painful and it became red. He ejaculated some white fluid and thereafter, left her. He was again calling her while she was returning. She returned home weeping and narrated the incident to her mother. Her father took her to the house of Narendra and thereafter, she went to police station and from there she was sent for medical examination. In her cross-examination she has denied the suggestion that she was deposing as per tutoring by her mother and further denied that Narendra did not do anything with her.

9. PW-2 Toranlal Sahu, father of the prosecutrix, has also stated that on the date of incident at about 1.00 p.m. her daughter came to the house weeping and on enquiry she told that Narendra made her lie and was doing something. When he saw her private part, he found it was reddish. He went to the house of Narendra and asked him why he did so, however, Narendra did not come out of the house and thereafter, he along with his wife and daughter went to police station to lodge the report. Her wife lodged the report. PW-4 Premkunwar Bai, mother of the prosecutrix, has also stated that the prosecutrix returned home weeping and on being asked she disclosed that Narendra has done wrong work with her. Thereafter, she observed her private part and found that it had turned red and some white spots were present on her clothes. They went to the house of Narendra and asked him about the incident. However, he denied the allegations. Subsequently, a report was lodged in the police station. The frock of the prosecutrix was taken into possession under Ex.P/1. The report was lodged on the basis of information given by her daughter. She has denied the suggestion that they had brought the daughter to court after tutoring her.

10. PW-9 Ajit Yadav, Police Inspector, has proved the First Information Report of Ex.P/2. PW-10 Dr. (Smt.) P. Dani, has examined the prosecutrix and proved her medico legal report of Ex.P/12. She has also proved the report of Ex.P/13 given after examining frock of the prosecutrix. She answered the queries of Ex.P/3 sent by the police vide her report of Ex.P/14. This witness has stated that on examination she did not notice any external injury over person of the prosecutrix. She also did not notice any injury near private part. The hymen of the prosecutrix was intact and two slides were prepared. On the frock brought by the constable she had spotted two white spots, on which she advised chemical examination of the spots on the frock. In reply to query of Ex.P/3, she had given her report of Ex.P/14. On the question by the Court, this witness has stated that slight reddishness was present over vagina and reddishness could be caused as a result of insertion or attempt to insert erected penis or because of rubbing. In cross-examination she has stated that the prosecutrix was not allowing her to touch her vagina as it was painful, reddishness over the vagina was slightly more than the normal course. If forcible intercourse is done in that case injury could be caused in the vagina. However, she has admitted that she has not mentioned in her report of Ex.P/12 regarding reddishness present in the vaginal part. She did not mention it because it was very less and she has denied that since there was no reddishness, she did not mention the same in her report.

11. Learned counsel for the appellant has vehemently argued that the complainant has stated in her deposition that report was in fact recorded on the basis of information given by the prosecutrix though from perusal of the FIR, which is shown to be lodged by the complainant i.e. mother of the prosecutrix, it is submitted that the report itself is doubtful. There is no force in the above submission of learned counsel for the appellant as from the evidence available on record it is evident that the prosecutrix accompanied her mother, complainant, and father to the police station and there report was lodged in her presence on the

information given by mother of the prosecutrix and the same bears thumb impression of the complainant. It is but natural that when the prosecutrix was herself present at the time of lodging report, some questions must have been put to her by the police and after satisfying with the answers given by her, the report would have been registered on the basis of information given by the complainant and it cannot be termed to be doubtful, particularly when the prosecutrix is a girl of about 7 years.

12. The prosecutrix has clearly stated that she had gone to watch picture when the accused took her to his Mami's residence, where younger brother of the accused was watching picture. Narendra committed rape on her and after some white fluid was discharged, he left her. There is omission in her diary statement regarding accused Narendra taking her to his Mami's house and gagging her mouth with cloths. However, she has categorically stated about the offence. Her testimony is corroborated by the statement of her mother and father as also by the statement of Dr. (Smt.) P.Dani (PW-10) who examined her on the following day of the incident. The doctor has stated in her report that hymen of the prosecutrix was intact and there was no external injury on her person or private part. However, she has further admitted that there was reddishness over her vagina, which could be caused by the penetration of erected penis or while attempting penetration. It could also be caused due to rubbing. She has further stated that the prosecutrix was not allowing her to touch her vagina as it was painful. Though there is omission in the report of Ex.P/12 regarding presence of reddishness over vagina, however, the doctor in her Court statement has explained the same that she did not describe reddishness over vagina of the prosecutrix in her report as it was too less, which she did not consider necessary to mention. Mother of the prosecutrix had observed private part of the prosecutrix immediately after the incident and she has stated in her deposition that it was reddish at that time. The prosecutrix has herself stated that the appellant inserted his penis into her vagina and she felt acute pain. Even father of the prosecutrix has

also stated that immediately after the incident he checked her private part and found reddishness there. The incident is of 6th August 2000 whereas the prosecutrix was examined on the following day, thus if we evaluate the statements of the prosecutrix, her parents and also the statement of lady doctor who examined the prosecutrix, we observe that version of the prosecutrix that the accused penetrated his penis into her vagina, is duly corroborated by the statements of her parents as also Dr. (Smt.) Dani.

13. In the matter of Aman Kumar and another (supra) it has been held that for the offence of rape proof of penetration is a sine quo non. However, it has been further held that complete penetration with emission of semen and rupture of hymen is not necessary and a slight penetration in vulva with or without violence is sufficient and depth of penetration has been held to be immaterial.

14. In the instant case also, there is evidence of the prosecutrix that the appellant inserted his penis into her vagina, as a result of which she felt pain, when her vagina was examined by her parents they found reddishness was present there and even on the second day when she was examined by the doctor slight reddishness was present on her vagina and she was not allowing the doctor to touch the vagina. Apart from the above evidence, as per F.S.L. report spots of semen and spermatozoa were found over the vaginal slides of the prosecutrix and underwear of the accused.

15. On the basis of aforesaid analysis, this Court is of the considered opinion that there is no illegality or infirmity in the impugned judgment of trial Court, which warrants interference.

16. In the result, the appeal being devoid of substance is liable to be dismissed and is accordingly, dismissed.

Sd/-
Dhirendra Mishra
Judge